

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LYNN NOYES,)	
)	2:02-cv-2685-GEB-CMK
Plaintiff,)	
)	<u>ORDER RE PROPOSED JURY</u>
v.)	<u>INSTRUCTION NO. 14</u>
)	
KELLY SERVICES, INC.,)	
)	
Defendant.)	
_____)	

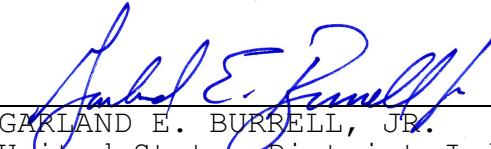
The parties are directed to meet and confer on the portion of Jury Instruction No. 14¹ that reads:

If, however, the Defendant proves by a preponderance of the evidence that the Defendant would have made the **same decision** even if the Plaintiff's religion or lack of religion had played no role in the employment decision, your verdict should be for the Defendant. (Emphasis added.)

¹ Jury Instruction No. 14 was originally proposed by Plaintiff on March 4, 2008, as "General Instruction No. 7."

1 No verdict question relates to this portion of Jury Instruction No.
2 14.² It appears that this portion of Jury Instruction No. 14
3 should be deleted unless defendant is asserting the "same decision"
4 affirmative defense.³ The parties shall address this issue in a
5 filing due no later than noon on April 1, 2008.

6 Dated: March 31, 2008

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9 GARLAND E. BURRELL, JR.
United States District Judge

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27 ²The verdict form discussed on March 27, 2008 is attached.

28 ³This portion of Jury Instruction No. 14 is based on the Ninth
Circuit Model Jury Instruction 10.1C, which suggests that the "same
decision" defense language be deleted if defendant does not assert
this affirmative defense.